

REMARKS

Claims 1-52 are pending in this application. In an Office Action mailed July 5, 2007 ("OA") the Examiner rejected claims 1-52 under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 5,999,193 to Conley, Jr. et al ("*Conley*") in view of Applicant's admitted prior art.

In response to the Office Action, Applicant amends claims 1, 8, 14, 27, 34, 40 and 47. Applicant respectfully traverses the rejections and request reconsideration based on the following remarks. In addition, Applicant does not necessarily agree with or acquiesce in the Examiner's characterization of the claims or the prior art, even if those characterizations are not addressed herein.

Claim Amendments

Applicant has amended claim 1 to recite "a method for visualizing numerical benchmarks to interpret the performance of a business, comprising automatically accessing information electronically from a data provider relating to the general performance of a business in relation to an industry wherein the information includes a business ratio value, an industry lower quartile value, an industry median value and an industry upper quartile value ..." (Emphasis added) This amendment is fully supported by the specification, for example, in Paragraphs [0032], [0033], and [0055]. Claims 8, 14, 27, 34, 40 and 47 are similarly amended. No new matter has been added with these amendments.

Rejections Under 35 U.S.C. § 103

Applicant respectfully traverses the rejection of claims 1-52 under 35 U.S.C. § 103(a), because a *prima facie* case of obviousness has not been established. To

establish a *prima facie* case of obviousness the prior art reference (or references when combined) must teach or suggest all the claim limitations. See MPEP § 2142, 8th Ed., Rev. 5 (August 2006). Moreover, “in formulating a rejection under 35 U.S.C. § 103(a) based upon a combination of prior art elements, it remains necessary to identify the reason why a person of ordinary skill in the art would have combined the prior art elements in the manner claimed.” USPTO Memorandum from Margaret A. Focarino, Deputy Commissioner of Patent Operations, May 3, 2007, page 2.

The Examiner rejected claims 1-52 under 35 U.S.C. § 103(a) as being obvious over *Conley* in view of Applicant’s admitted prior art. The Examiner asserts that *Conley* discloses “accessing information relating to general performance of a business in relation to an industry wherein the information includes a business ratio value, and an industry average value,” as recited by claim 1. OA page 3. *Conley* however, fails to teach or suggest “automatically accessing information electronically from a data provider relating to general performance of a business in relation to an industry” as recited by amended claim 1 and similarly recited by amended claims 8, 14, 27, 34, 40, and 47. (Emphasis added). In contrast, *Conley* teaches inputting data, bar values, and threshold values for use in generating comparison charts. *Conley*, Column 5 lines 7-33. In other words, *Conley* discloses a method wherein information used to generate comparison charts is inputted by a user through a user interface, rather than accessed from a business data provider. *Id.* For example, *Conley* provides:

Column 5, lines 7-9:

“As shown in FIG. 4, the routine proceeds to block 58 where the user inputs various visual object formulates/values 92 using the user interface 14a4 shown in FIG. 12.” (Emphasis added)

Column 6, lines 7-12:

"The input of comparator information is continued with interface 14a7 where the comparators of the chart 12 are input into comparator 14 and the comparator values or formulates 40 are input." (Emphasis added)

Accordingly, *Conley* fails to teach or suggest "automatically accessing information electronically from a data provider," as recited by amended claims 1, 8, 14, 27, 34, 40 and 47. In addition, Applicant's admitted prior art also does to teach or suggest "automatically accessing information electronically from a data provider" as recited by amended claims 1, 8, 14, 27, 34, 40 and 47.

As *Conley* and Applicant's admitted prior art, whether taken alone or in combination, fail to teach or suggest every element required by amended claims 1, 8, 14, 27, 34, 40 and 47, a *prima facie* case of obviousness cannot be established with respect to claims 1, 8, 14, 27, 34, 40 and 47. All remaining claims depend from one of claims 1, 8, 14, 27, 34, 40 or 47, and are allowable for at least the same reasons as the claim from which they depend.

Moreover, regarding the Examiner's assertion that "graphing median, upper quartile, and lower quartile values in the form of a boxplot, and marking points on a line to compare values is old and well known in the art," to the extent that the Examiner is taking Official Notice that such limitations are "well known," Applicant reminds the Examiner that when relying on common knowledge, or taking Official Notice, to support a rejection under 35 U.S.C. § 103(a), "the [examiner] must point to some concrete evidence in the record in support of these findings" to satisfy the substantial evidence test. In re Zurko, 258 F.3d 1379, 1386, 59 USPQ2d 1693, 1697. Furthermore, if the Examiner is relying on personal knowledge to support the finding of what is known in

the art, the Examiner must provide an affidavit or declaration setting forth specific factual statements and explanation to support the finding. See 37 C.F.R. § 1.104(d)(2). If the Examiner maintains the rejection by relying on the position that "graphing median, upper quartile, and lower quartile values in the form of a boxplot, and marking points on a line to compare values is old and well known in the art," Applicant asks that the Examiner provide additional evidentiary evidence, either in the form of a reference or affidavit, to support this statement.

Conclusion

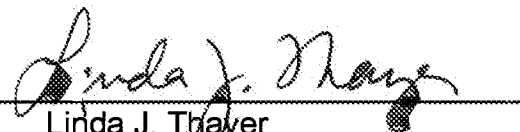
In view of the foregoing amendments and remarks, Applicant respectfully requests reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

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